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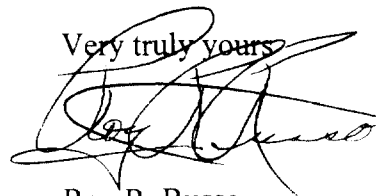
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **MM Docket Nos.: 94-150**
92-51
87-154
91-221
87-8
96-222
96-197

Dear Mr. Caton

Transmitted herewith on behalf of Waterman Broadcasting Corporation, the parent corporation of the licensees of several broadcast stations, including Station WBBH-TV, Fort Myers, Florida, licensed to Waterman Broadcasting Corp. of Florida, are an original and 11 copies of its Comments on the multiple ownership and related Notices of Proposed Rulemaking captioned above.

Very truly yours,



Roy R. Russo

Enclosure

cc w/encl.: Peter Tannenwald, Esq.
James J. Popham, Esq.

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BEFORE THE

Federal Communications Commission

In the Matter of

Review of the Commission's Regulations
Governing Attribution of Broadcast and
Cable/MDS Interests

MM Docket No. 94-150

Review of the Commission's Regulations
and Policies Affecting Investment in the
Broadcast Industry

MM Docket No. 92-51

Reexamination of the Commission's
Cross-Interest Policy

MM Docket No. 87-154

Review of the Commission's Regulations
Governing Television Broadcasting

MM Docket No. 91-221

Television Satellite Stations Review of
Policy and Rules

MM Docket No. 87-8

Broadcast Television National Ownership
Rules

MM Docket No. 96-222

Newspaper/Radio Cross-Ownership
Waiver Policy

MM Docket No. 96-197

To: The Commission

COMMENTS OF WATERMAN BROADCASTING CORPORATION

Waterman Broadcasting Corporation ("Waterman"), the parent corporation of the licensees of several broadcast stations, including Station WBBH-TV, Channel 20, Fort Myers, Florida (licensed to Waterman Broadcasting Corp. of Florida, Inc.), submits the following Comments on the TV multiple ownership and related Notices of Proposed Rulemaking captioned above.

Waterman supports fully the Comments being filed separately by the Local Station Operators Coalition ("LSOC"), of which Waterman has been a participant since its inception. Waterman particularly supports the LSOC's comments which supply the Commission with compelling policy reasons for extending TV duopoly to at least two UHF stations in the same market and for grandfathering pre-existing LMAs including extension of terms, renewals of agreements, and any assignment or transfers of control of the stations involved.

Waterman files these separate Comments, however, to demonstrate how the general principles enunciated in the LSOC comments apply to the specific situation which obtains in the Fort Myers-Naples, Florida market. Waterman submits that its experience in the institution and effectuation of the LMA it created in 1994 with Station WZVN-TV in Naples exemplifies how such an arrangement -- indeed even common ownership of the two stations -- is not only consistent with the public interest but actually *further*s the public interest goals of the Commission as set forth in the rulemaking notices now under consideration.

History of the Relationship Between Stations WBBH-TV and WZVN-TV

Waterman has been the licensee of Station WBBH-TV since the company, owned by Bernard and Edith Waterman, acquired the station in 1979. (Mr. Waterman has been a Commission licensee for over 40 years.) At one time, following extensive discussions with the Commission's staff concerning the regulatory status of TV LMA's, Waterman contemplated entering into a Time Brokerage Agreement with an independent station in the Fort Myers-Naples market, but that agreement never came to fruition because of a stockholder dispute with respect to the other licensee. In 1994, however, again following extensive discussions with the Commission staff, including

meetings attended by Mr. Waterman and undersigned counsel in Washington concerning the proposed arrangement, Waterman entered into a Time Brokerage Agreement with Elcom of Florida, Inc., then the licensee of Station WZVN-TV (formerly WEVU-TV) in Naples.

Upon the sale by Ellis of its television station properties in 1996, Waterman assigned its option to purchase the station to Montclair Communications, Inc. (which is wholly owned by Lara Kunkler, bringing female ownership to the Fort-Myers-Naples TV market). Following FCC approval in September 1996, Montclair acquired Station WZVN-TV in October 1996 and assumed Ellis's position under the Time Brokerage Agreement. Payments under the Time Brokerage Agreement support the bank loan which Montclair secured for payment of the purchase price for WZVN-TV.

**The Waterman LMA with WZVN-TV Rescued a Distressed Station
in the Market and Has Led to Significant Increases
in News and Public Affairs Programming**

When the WBBH-TV/WZVN-TV Time Brokerage Agreement was executed and effectuated in June 1994, WZVN-TV's position in the market was at a low point: its financial condition left it with an outdated physical plant and a bare-bones local sales staff. Station WZVN-TV was, at that time, non-competitive in the market and its (non)profit level was such that it was simply unable, for example, to produce and broadcast any significant local news or public affairs programming. (The WZVN-TV situation was such that it had four separate owners in a period of four years.) The infusion of income to WZVN-TV from Waterman has permitted Station WZVN-TV to rebound from this distressed position dramatically, and it now presents a significant amount of independently-produced news programming, as reflected further below.

A. **The LMA Arrangement Has Produced an Increase in Diversity of Programming**

The public benefits of the WBBH-TV/WZVN-TV Time Brokerage Agreement are many and manifest. The Time Brokerage Agreement has in fact *increased diversity* in the market, as a direct result of the significant improvement of WZVN-TV from its pre-June 1994 situation of fiscal distress. As a result of this arrangement, Montclair now broadcasts from a new state-of-the-art studio, broadcasting its ABC network programming, completely non-duplicated syndicated and local programming with a WZVN-TV news staff which is fully competitive in the marketplace. Station WZVN-TV provides an exclusive-to-the-market 7:00 P.M. daily 30-minute newscast, as well as newscasts in conventional time periods. The two stations now utilize three AMS meteorologists and three additional weather forecasters providing the market with comprehensive weather service in one of the major hurricane designated areas in the nation. The stations have access to the new and strongest Doppler Radar in the market. Each station -- WBBH-TV and WZVN-TV -- broadcasts its own newscasts with separate meteorologist, dual anchors, sports anchor, and producer. News data differs substantially on each station. Specific reporters and producers are assigned to each station, with a majority of support staff shared by both stations. Attached as Exhibit A is a summary of the significant improvements in the facilities of the two participating stations which the economies of scale of dual operation have facilitated.

B. **The LMA Arrangement Has Produced a Significant Increase in Local Employment.**

The subject local LMA agreement has increased total employment of the two stations from 138 to 190 -- a 38 percent increase. The LMA'd station, WZVN-TV, now has better medical insurance coverage, participation in a retirement benefit (401k) plan for the first time, and higher pay

scales. Importantly, technical personnel benefit from state-of-the-art digital studios and related equipment that provides high level training. Promotions from within and new hires are more frequent, benefiting minorities with more opportunities.

The total news complement of the two stations has increased from 66 full time to 80, a 20 percent increase. (Prior to the LMA, WZVN-TV had 21 and WBBH-TV 45 full-time news employees.) Numerous advantages flow individually and collectively to each station as a result of this improvement in news capability.

Station WZVN-TV also now participates in the corporate Internship Program, training college students such as Northwestern University Journalism majors.

C. **The-two-to-a-market television concept dramatically improves public service.**

Station personnel made 305 personal appearances before community organizations in 1996 and thousands of public service announcements by each station provided the public with responsible information.

Multiple "Voices" Permeate the Fort Myers-Naples DMA

The Fort Myers-Naples DMA has been subject to increasing media concentration involving both radio and cable. This situation continues to disadvantage the individual television station financially and, accordingly, its ability to serve the public interest. Attached as Exhibit B is a summary of the various media outlets in the Fort Myers-Naples DMA. Below is a brief reference to cogent statistics.

Three major radio corporations control a high number of frequencies.

US West purchased Continental Cable and has a sales arrangement with the other major cable companies, Comcast, Time Warner and Jones Intercable. Using an interconnect concept whereby advertisers can purchase one or all of the joint cable company franchises for one rate creates for cable a formidable time sales advantage.

Further, the WB Network is carried by the local cable companies on lower tier channels with a broadcast-like call sign - WSWF - thus competing directly with television station network programming. The largest cable company broadcasts a 5:30 PM newscast.

The financially handicapped television station faces the obvious more serious competitive disadvantage than the stronger television that nevertheless continues to face decline in revenue and audience, while other media enjoy increased economic benefits. Miller Kaplan audited year-end financial data reveal that total television revenue in the Fort Myers-Naples market increased only 2 percent, less than inflation, for the period. Profits accordingly declined. A continuation of this alarming trend will minimize the ability of viable stations to maintain (not to mention increase) public service and news. A distressed TV station without duopoly and/or LMA support would face extinction, thus *reducing* diversity in the market.

Duopoly Relaxation Would Contribute to Development of Digital TV

Both stations involved in the WBBH-TV/WZVN-TV LMA are UHF stations which face channel allocations under the Commission's DTV allotment plan which would limit homes covered to a level much lower in number than the VHF station in the same market. The present discrimination in coverage which favors VHF over UHF would be, in the Commission's own term,

“replicated.” Duopoly/LMA relaxation would afford a compensating advantage value for all UHF facilities.

Conclusion

As noted at the outset, Waterman supports the Comments filed in this proceeding by the Local Station Operators Coalition. The Comments of Waterman Broadcasting Corporation demonstrate with dramatic specificity how an existing TV LMA has significantly served the public interest in the Fort Myers-Naples DMA on a number of levels, including the survival of a distressed station, public service and news programming resulting in an increase in programming diversity in the market, expanded local employment opportunities, and improvement in the prospects for conversion of both stations to the Digital TV era.

We submit that all these positive elements of the LMA now in place for WBBH-TV and WZVN-TV compel the conclusion that, at a minimum, the commission should respect the Congressional determination that LMAs in existence on the date of enactment of the Telecommunications Act of 1996 (February 8, 1996) should be grandfathered, and this should be read to include the renewal and extension of the term of the LMA, as well as the assignment or transfer thereof (as exemplified by the already accomplished assignment of WZVN-TV in our situation). The date of execution of the WBBH-TV/WZVN-TV Time Brokerage Agreement, June 1, 1994, long antedates any suggested grandfathering date, and special consideration should be given to the considerable financial commitment made by Waterman and by Montclair based on this lawful and public-serving arrangement.

Further, however, all of the public benefits which have been shown for the WBBH-TV/WZVN-TV LMA would have occurred if the stations were, in fact, commonly owned rather than LMA'd. We submit that the experience of these stations in the Fort Myers-Naples market demonstrates beyond cavil that common ownership of two UHF stations can and would serve the public interest. The Commission's actions in this series of rulemaking dockets may well determine whether the long-successful over the air broadcast system will survive the competitive onslaught of cable, DBS, MMDS and other *multi-channel* video program sources which increasingly fragment the TV viewing marketplace.

Respectfully submitted,

WATERMAN BROADCASTING CORPORATION
OF FLORIDA

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February 7, 1997

Exhibit A: Improved Technical Facilities

A station that is financially and fixed asset distressed can be a viable television station through utilization of specific fixed assets of the other station. The stronger television station can provide financial and fixed asset support that would otherwise be unavailable.

EXAMPLES:

*** Doppler Radar**

A \$400,000 investment that neither station could have made individually. Now, viewers of both stations can benefit from a powerful and accurate life-saving tool in an area with severe weather conditions. Previously, WZVN-TV had no local radar. WBBH-TV had an outdated, weak weather radar.

*** New Digital Routing System**

Allows investment in one larger digital routing system rather than buying two smaller systems at a greatly increased price. Now, both WBBH-TV and WZVN-TV are capable of routing digital signals in preparation for High Definition Television. This is equipment that WZVN-TV simply would not have if it were not for combined operation. (Cost: \$180,000)

*** Satellite News Gathering Vehicle and 3 Microwave live trucks**

WBBH-TV previously was the only station in the market that could provide live remote coverage of local stories happening outside the region. Now, WZVN-TV benefits from this news gathering tool. WZVN-TV is also able to provide the ABC Television Network with satellite feeds of regional/national importance. Additionally, Waterman Broadcasting purchased a new state of the-art ENG vehicle dedicated for WZVN-TV. Previously, WZVN-TV had an unsafe home-made live vehicle. WZVN-TV has access to the other ENG trucks owned by WBBH-TV. Cost for live vehicles: \$675,000

*** New Digital Studio and Control Room**

A \$2.5 million investment provides WZVN with the most advanced broadcast studio in the market. The 3600 square foot facility was built by Waterman Broadcasting exclusively for WZVN-TV's use, adjoining the WBBH-TV facility. The fully digital control room will provide for a smooth transition to Advanced Television and High Definition Television.

Each station engages in its own public affairs and public service programming.

*** WZVN-TV**

WZVN-TV is currently working on two major projects. First, in conjunction with ABC, is March Against Drugs. This is a month long effort to encourage parents to take time to talk to their

Exhibit A

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children about the detrimental effect of drug abuse. Second, is KidsFest, a day long festival held at a local convention center where parents and children will be able to visit booths sponsored by community organizations which concentrate on positive opportunities and activities for families.

*** WBBH-TV**

At the same time, WBBH-TV is beginning its eighth annual A-Team Challenge, a regional high school academic competition. Every high school in our DMA (23 total) competes in a weekly televised contest. A total of 18 half hour contests will be produced and televised by WBBH-TV. The A-Team Challenge culminates in an hour long final game which is telecast in prime time in late April.

EXHIBIT B: FORT MYERS, FL: MARKET INFORMATION

The designated market area for measuring television audience consists of six counties, Collier, Lee, Charlotte, Desoto, Hendry and Glades. Naples is located in Collier County. Fort Myers is located in Lee County. Collier, Lee and Charlotte counties account for 90% of television homes.

- **Television**

- ***VHF**

- | | | | | |
|---------|-----|------------|---------------|------------------------------------|
| WINK-TV | VHF | Channel 11 | CBS Affiliate | Licensed to the City of Fort Myers |
|---------|-----|------------|---------------|------------------------------------|

- ***UHF**

- | | | | | |
|---------|-----|------------|-------------------|------------------------------------|
| WBBH-TV | UHF | Channel 20 | NBC Affiliate | Licensed to the City of Fort Myers |
| WFTX-TV | UHF | Channel 36 | FOX Affiliate | Licensed to the City of Cape Coral |
| WGCU-TV | UHF | Channel 30 | PBS Affiliate | Licensed to the City of Fort Myers |
| WRXY-TV | UHF | Channel 49 | Religious Station | Licensed to the community of Tice |
| WTVK-TV | UHF | Channel 46 | UPN Affiliate | Licensed to the City of Naples |
| WZVN-TV | UHF | Channel 26 | ABC Affiliate | Licensed to the City of Naples |

- **Radio**

32 radio stations serve the market. Clear Channel and Beasley own multiple stations. Fort Myers Broadcasting, which owns WINK-TV, also owns three radio stations. Meridian Broadcasting, recently formed by the former General Manager of WINK-TV and radio, owns three radio stations and LMA's the three radios owned by Fort Myers Broadcasting.

- **Cable**

Four major Cable Companies cover 95% of the DMA, US West-Continental, Jones Inter-Cable, Time Warner and Comcast.

- **MMDS and DBS are participants in the market.**

- **Newspaper and Magazine**

E.W. Scripps owns the daily local newspaper serving Naples. Gannett owns the daily local newspaper serving Fort Myers. A local owner publishes a daily paper in Charlotte County. Thirty plus weekly newspapers and magazines are published in the area.